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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 269 OF 2000

The State of Maharashtra ... Petitioner

Versus

Shri.J.P. Lobo ... Respondent

Mrs. M.P. Thakur, A.G.P. for Petitioner.

Mr. N.V. Bandiwadekar for Respondent.

CORAM: F.I. REBELLO &
R.V. MORE,JJ.
DATED: JANUARY 25, 2007

P.C.:

. The Petitioner State has moved this court against the order passed by the Maharashtra Administrative Tribunal (MAT) in Original Application No. 256 of 1999 dated 16.7.1999. Disciplinary proceeding had been initiated against the respondent who was working as Jailer, Grade II in the Bombay Central Prison. Chargesheet was served for various acts of misconduct. Considering the misconduct alleged and proved, punishment was imposed of 100% deduction of pension as in the meantime the respondent had retired in June, 1993. The chargesheet had contained as many as 13 charges. The Enquiry Officer in respect of the charge Nos. 1, 3, 5, 6, 12 and 13 arrived at the conclusion that those charges were not proved. In so far as charges Nos. 7, 8, 10 and 11 held that they were partly proved.

In respect of Charge Nos. 2, 4, 9, the Enquiry Officer left it for decision by the Disciplinary Authority. The Disciplinary Authority held the charge Nos. 1 to 9 and 11 and 12 as proved and Charge No. 10 as partly proved. Based on these findings, the order was passed on 12.3.1999 imposing punishment of withdrawal of 100% pension with permanent effect.

. The Respondent filed Original Application No. 256 of 1999 challenging the imposition of punishment as also the findings recorded by the Enquiry Officer and Disciplinary Authority on various grounds. The learned Tribunal considering the contentions advanced by the respondent and the relevant records held that the Disciplinary Authority proceeded to disagree with the findings of the Enquiry Officer without giving any opportunity to the Petitioner. The Tribunal found that though the Disciplinary Authority differed from the findings of the Enquiry Officer, yet did not indicate any reasons for arriving at such conclusion nor was the Petitioner given opportunity to submit his representation. It was held that this was patently contrary to the principles of natural justice and fair play. The Tribunal also noted that the Respondent had sought documents relied on by the authority which were not made available to the Petitioner on the ground that

they were not available with the concerned persons. The Tribunal noted that normally it might have been inclined to remit he matter back to the Disciplinary Authority to give a fresh opportunity to the Petitioner to show cause after indicating the reasons for deviating from the findings of the Enquiry Officer. Considering non application of mind and bias on the part of the Disciplinary Authority, the tribunal felt that no useful purpose will be served by such a course of action. The tribunal further noted that the Petitioner had also been prejudiced by the non-supply of the documents, sought for by him, the relevance of which has not been disputed by the Enquiry Officer. The tribunal accordingly set aside the impugned order dated 12.3.1999. It is this order which is the subject matter of the present Petition.

. In our opinion, once the learned Tribunal had come to the conclusion that the findings of the Disciplinary Authority as also the Enquiry Officer were in contravention of the rules, or in violation of principles of natural justice and fair play, it could have set aside the punishment imposed by directing holding of enquiry afresh. There could have been no case of total exoneration by setting aside the order of punishment as nothing was brought on record that the enquiry itself was vitiated on

account of statutory violations of constitutional mandate except as to procedural requirement. In our opinion therefore, the order of the tribunal ought to be set aside. The question is considering the long passage of time what course we should adopt.

. The Petitioner has retired from the service in the year 1993. We are in the year 2007. The issue really is in the circumstances, whether we should remit the matter back to the Enquiry Officer for a denovo enquiry. In our opinion, at least, there is concurrence of findings both by the Enquiry Officer and Disciplinary Authority on some charges and consequently at least in respect of those charges, it would have been open to the Disciplinary Authority to impose punishment.

. On behalf of the Respondent, their leaned counsel has given translation of findings in respect of the charge Nos. 7, 8, 10 and 11 to point out that even in respect of those charges, considering the evidence on record, the respondent could not have been held guilty of the charges alleged. Further submission is that if the statement of Shri.Deshpande, another chargesheeted officer is considered, then the Respondent could not have been held liable. We are unimpressed. Merely because the Respondent might have given some oral

explanation, that by itself would not result in the respondent being exonerated of the charges. That contention must therefore, be rejected.

. We have heard learned counsel for the parties on the quantum of punishment considering the charges proved and the deficiencies in the enquiry and failure to give opportunity to the respondent by the Disciplinary Authority while differing with the findings of the Enquiry Officer. We have also noted that the Enquiry Officer instead of recording findings on some charges, left it to the Disciplinary Authority. This by itself would be another ground to vitiate the enquiry.

. Considering these circumstances, in our opinion, the punishment imposed of withdrawal of 100% Petition with permanent effect, is too harsh and disproportionate to the charges levelled and proved. In these circumstances, and taking the totality of the circumstances into consideration, we are of the opinion that the punishment of withdrawal of 25% pension as of today would meet the ends of justice. Considering the above, the order of the Tribunal is set aside. The order of the Disciplinary Authority is modified to the extent that the order dated 12.3.1999 imposing punishment of withdrawal of 100% pension with permanent effect is reduced to 25% of

the pension with permanent effect from 01.02.2007. There will be no recovery in respect of the pension paid as and upto 31.01.2007.

. Rule made partly absolute in the afforestated terms. There shall be no order as to costs.

(R.V. MORE,J.) **(F.I.REBELLO, J.)**